

RECEIVED

JUN 17 2003

GENERAL COUNSEL  
OF COPYRIGHT

Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

ORIGINAL

In the Matter of )

Digital Performance Right in Sound )  
Recordings Rate Adjustment )

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**COMMENTS OF LESTER CHAMBERS**  
**OBJECTING TO PROPOSED TERMS**

Pursuant to the Notice of Proposed Rulemaking in the above-captioned proceeding, published at 68 Fed. Reg. 27506 (May 20, 2003), Lester Chambers, by and through undersigned counsel, hereby files objections to those terms of the proposed regulations that fail to include Royalty Logic, Inc. (RLI) as a designated agent - thereby denying Mr. Chambers the right to designate the agent of his choice pursuant to Sections 112(e)(2), 114(e)(1-2) and 114(g)(3). Further, Mr. Chambers objects to regulations that distort what should be a level playing field among designated agents; that would allow RIAA/SoundExchange to function as an unregulated "Receiving Agent"; and, which on the demise of RIAA/SoundExchange, would allow successor collectives to be formed out of the ashes of RIAA/SoundExchange without any oversight or approval of copyright owners and performers.

Mr. Chambers insists on being able to engage representation of his choosing and is appalled at the system of regulations (e.g., requirements for "designation" of agents) that could prevent him from doing so. Mr. Chambers has no interest in being represented by the RIAA or the major record companies. Yet, the RIAA can collect and distribute all monies from all statutory licensing, build a new business for the benefit of their major record company members and recoup their investment on the backs of the royalty recipients, leaving performers and copyright owners who would never elect to be represented by the RIAA without any self-determination whatsoever.

Furthering this injustice, the process available to Mr. Chambers to exercise a voice in these matters is totally impractical. The CARP process is time consuming, expensive and requires a legal expertise that no one but the largest companies can afford. Because the RIAA represents the major record labels they can use this process to coerce services into settling with them on RIAA terms. The RIAA is attempting to use this process to achieve an anti-competitive result – to deny Mr. Chambers his choice of representation.

Therefore, Mr. Chambers is hereby submitting a Notice of Intent to Participate in any arbitration in this proceeding with respect to designation of, and the terms and regulations applicable to, the Designated Agents.

**I. Mr. Chambers' background and interest in this proceeding.**

As a founding member of the Chambers Brothers, Mr. Chambers, along with his brothers, are credited with being among the first performers to introduce a unique blend of southern gospel and rock & roll to the audiences of the early '60's. Their legendary hits, such as "Time Has Come Today," "Love, Peace, and Happiness," and "Can't Turn You Loose" have stood the test of time and are still enjoyed today by audiences young and old. Mr. Chambers commitment to making great music has continued into the 21<sup>st</sup> century. He is making new recordings and touring regularly. Webcasters and other digital transmissions services are now providing a new vehicle to promote Mr. Chambers music and make it available to vast audiences of contemporary music fans, old and new, the world over. How Mr. Chambers collects his royalties is very important to him.

Mr. Chambers is an affiliate of RLI and has authorized RLI to represent him in direct and voluntary license transactions with transmission services and to collect the royalties that he is entitled to pursuant to the Section 112 and 114 statutory licenses. As a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services, he would be denied his right to receive royalties through the agent of his choice if RLI were not "designated" to collect royalties from all statutory and voluntary licenses. Therefore, Mr. Chambers is an "interested" party with a "significant" stake in this proceeding<sup>1</sup>.

---

<sup>1</sup> In prior proceedings, the Copyright Office defined what it means to be an "interested party" for purposes of participating in a CARP proceeding. Having an interest in a CARP

Footnote continued on next page

**II. RLI must be authorized as a designated agent to collect statutory and voluntary license royalties, if Mr. Chambers rights are to be protected.**

Sections 112(e)(2)<sup>2</sup> and 114(e)(1-2)<sup>3</sup> of the U.S. Copyright Law give copyright owners the right to designate common agents for the purpose of administering both voluntary and statutory licensing transactions - without limitation or any requirement of governmental or regulatory designation. Further, in the previous webcasting CARP the Librarian of Congress determined that featured performing artists have a "direct and vital" interest in how their royalties are collected and distributed and gave featured performers, as well as copyright owners, the right to choose the agent that will represent them<sup>4</sup>. That right to choose would be rendered meaningless if there were not at least two agents from which to choose. Failure to designate RLI as a designated agent will force Mr. Chambers, against his will, to receive the

---

Footnote continued from previous page  
proceeding "suggests that a participant must be a party directly affected by the royalty fee, e.g., as a copyright owner, a copyright user, or an entity or organization involved in the collection and distribution of royalties." Order, *In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Dkt. No. 99-6 CARP DTRA (June 21, 2000).

<sup>2</sup> §112(e)(2) ...any copyright owners of sound recordings...may designate common agents to negotiate, agree to, pay, or receive...royalty payments.

<sup>3</sup> §114(e)(1) ...in negotiating statutory licenses in accordance with subsection (f), ***any copyright owners of sound recordings*** and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and ***may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.***

§114(e)(2) For licenses...other than statutory licenses...***copyright owners of sound recordings affected by this section may designate common agents to act on their behalf to grant licenses and receive and remit royalty payments...***

<sup>4</sup> As the Panel acknowledged, "Copyright owners *and performers*, on the other hand, have a direct and vital interest in who distributes royalties to them and how that entity operates" Report at 132 (emphasis added). The Register agrees. It was arbitrary to permit Copyright Owners to make an election that Performers are not permitted to make. The Register can conceive of no reason why Performers should not be given the same choice. Accordingly, the Register recommends that § 261.4 be amended to provide that a Copyright Owner or a Performer may make such an election. See § 261.4(c) of the recommended regulatory text. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule*, 67 Fed. Reg. 45239 (July 8, 2002) (the "Webcaster Decision")

statutory portion of his royalties through RIAA/SoundExchange. In the event of the demise of RIAA/SoundExchange (as apparently contemplated by the proposed regulations)<sup>5</sup> Mr. Chambers could even be forced to receive royalties through some other unknown or unproven agent (perhaps owned by the RIAA, the major labels AFTRA, AFM, etc.). No law or regulation should force Mr. Chambers to receive royalties from an entity that he did not choose.

Furthermore, Mr. Chambers has chosen to affiliate with RLI<sup>6</sup> because he wants to be represented by a single independent administrator that can 1) license and collect royalties from voluntary licenses that authorize the promotion, transmission and distribution of his recordings, and 2) collect and distribute royalties from transmissions authorized pursuant to the statutory licenses. If RLI is not designated to collect and distribute all royalties, the administration of his royalties will become fragmented and he will be forced to use multiple agents creating an expensive and burdensome record keeping nightmare. Practically, Mr. Chambers would have to send information on past, current and future catalog sound recordings and performances to multiple agents. In addition, he would be forced to send payment information to multiple agents, provide tax information to multiple agents, monitor the timing and accuracy of payments received from multiple agents and perform audits on multiple agents. Collecting all of his royalties through a single administrator of his choosing for all his §114 royalties is the best way for him to insure the prompt, efficient and fair payment of royalties with a minimum of expense. If the Librarian of Congress truly believes that performers have a "direct and vital" interest in how their royalties are collected, then RLI

---

<sup>5</sup> §262.4 provides "If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal number of representatives of Performers and Copyright Owners, then it *shall be replaced by successor entities* upon...(A)...majority vote of the nine copyright owner representatives on the SoundExchange Board...(B)...majority vote of the nine performer representatives on the SoundExchange Board...."

<sup>6</sup> RLI was appointed by the Librarian of Congress as one of two Designated Agents for the distribution of royalties paid under the Section 114 statutory license for the digital transmission of sound recordings by Eligible Nonsubscription Services. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule*, 67 Fed. Reg. 45239 (July 8, 2002) (the "Webcaster Decision"); 37 C.F.R. §261.4(b).

must be designated to collect statutory license royalties in order for the performer's right to choose an administrator to be meaningful.

**III. Failure to extend RLI's designation would also deny Mr. Chambers the benefits that Congress intended to confer in the Small Webcaster Settlement Act.**

When Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA") it permitted a non-profit agent (i.e. RIAA/SoundExchange) to deduct certain costs from royalties to be distributed under the statutory license. These costs included historical litigation and other costs not previously approved by the Librarian of Congress. However, in order to protect the interests of copyright owners and performers that do not approve of such cost deductions, Congress specifically prohibited RIAA/SoundExchange from deducting royalties payable to clients of a competing agent (i.e., RLI)<sup>7</sup>. In other words, congress gave performers and copyright owners the absolute right to choose a designated agent other than SoundExchange so as to avoid the recoupment of historical litigation and other costs. The right to choose another agent, as enumerated in §114(g)(3), extends across all statutory licenses. Mr. Chambers has chosen to be represented by RLI for all statutory license collections - without the deduction of RIAA/SoundExchange costs that he did not authorize or incur.

If Mr. Chambers interests and the interests of other similarly situated artists are to be protected, as Congress intended, then RLI's designation must be preserved and extended so that it can collect all of his statutory royalties from all sources. Otherwise, Mr. Chambers will be denied his statutorily guaranteed choice and the exemption from cost recoupment that was the clear intention of Congress.

---

<sup>7</sup> §114(g)(3) "A nonprofit agent designated to distribute receipts...may deduct...prior to the distribution of such receipts to any person...other than copyright owners and performers who have elected to receive royalties from another designated agent and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent..." (emphasis added)

IV. Mr. Chambers objects to regulations that distort what should be a level playing field among designated agents; that would allow RIAA/SoundExchange to function as an unregulated "Receiving Agent"; and, which on the demise of RIAA/SoundExchange, would allow successor collectives to be formed out of the ashes of RIAA/SoundExchange without any oversight or approval of copyright owners and performers.

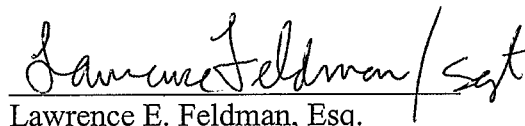
Please refer to the comments of RLI objecting to the proposed terms for a detailed discussion.

V. Conclusion

For the reasons set forth above, Mr. Chambers respectfully objects to the proposed regulations.

Respectfully submitted,

Date: June 11, 2003

A handwritten signature in cursive script, reading "Lawrence E. Feldman / Esq.", written over a horizontal line.

Lawrence E. Feldman, Esq.  
Feldman and Associates  
101 Greenwood Avenue  
Jenkintown, PA 19046  
Phone: (215) 885-3302  
Fax: (215) 885-3303  
Email: leflaw@leflaw.com

Attorney for Lester Chambers

Before the  
**LIBRARY OF CONGRESS**  
**UNITED STATES COPYRIGHT OFFICE**  
Washington, D.C.

ORIGINAL

In the Matter of	)	
	)	
Digital Performance Right in	)	Docket No. 2002-1 CARP DTRA 3
Sound Recordings	)	2000-2 CARP DTNSRA
Rate Adjustment	)	
_____	)	

**NOTICE OF INTENT TO PARTICIPATE**

Name: **Lester Chambers**

Address: c/o Feldman and Associates  
101 Greenwood Avenue  
Jenkintown, PA 19046

Telephone: (215) 885-3302

Facsimile: (215) 885-3303

Contact: Lawrence E. Feldman, Esq.

Lester Chambers ("Mr. Chambers"), by and through undersigned counsel, and pursuant to 17 U.S.C. § 801, the Notice of Proposed Rulemaking published by the Copyright Office at 68 Fed. Reg. 27506 (May 20, 2003), and Part 251 of the Rules of the Copyright Office, 37 C.F.R. § 251, hereby submits its Notice of Intent to Participate in the above-captioned proceedings of the Copyright Arbitration Royalty Panel ("CARP") to determine certain terms of the statutory licenses for the performance of sound recordings under 17 U.S.C. § 114, and for the making by them of ephemeral recordings under 17 U.S.C. § 112(e). Mr. Chambers wishes to participate in this proceeding solely with respect to the designation

## CERTIFICATE OF SERVICE

I hereby certify that on the 11th of June, 2003, a true and accurate copy of the foregoing document was served by overnight express mail on the following persons:

Kenneth L. Steinthal, Esq.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Ph: (212) 310-8000  
Fax: (212) 310-8007

***Counsel for BET Interactive LLC, American Online Inc., MTV Networks, MusicMatch, Inc., Yahoo! Inc., Live 365 Inc. and Listen.com***

Steven M. Marks  
Gary R. Greenstein  
Susan Chertkof Munsat  
Recording Industry Association of America, Inc.  
1330 Connecticut Avenue, N.W.  
Suite 300  
Washington, DC 20036  
Ph: (202) 775-0101  
Fax: (202) 775-7253  
***Counsel for Recording Industry Association of America, Inc. and SoundExchange***

Michele J. Woods  
Michele T. Dunlop  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, DC 20004-1206  
Ph: (202) 942-5000  
Fax: (202) 942-5999  
***Counsel for Recording Industry Association of America and its currently unincorporated division SoundExchange***

Jim Hayes  
Washington University  
Campus Box 1068  
One Brookings Drive  
St. Louis, MO 63130  
Ph: (314) 935-7983  
Fax: (314) 935-8516

David D. Oxenford  
Cynthia D. Greer  
Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, DC 20006  
Ph: (202) 663-8000  
Fax: (202) 663-8007  
***Counsel for Educational Media Foundation and Aritaur Communications, Inc.***

Patricia Polach  
Bredhoff & Kaiser, PLLC  
805 15<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, DC 20005-3315  
Ph: (202) 842-2600  
Fax: (202) 842-1888  
***Counsel for the American Federation of Musicians of the United States and Canada***

Michael N. Stone  
Fun With Radio/WWCD  
503 S. Front Street  
Columbus, OH 43215  
Ph: (614) 221-9923 ext. 158  
Fax: (614) 227-0021

Bruce D. Sokler  
Fernando R. Laguarda  
Susan E. McDonald  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, DC 20004  
Ph: (202) 434-7300  
Fax: (202) 434-7400  
***Counsel for Music Choice***



Bruce G. Joseph  
Karyn K. Ablin  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, DC 20006  
Ph: (202) 719-7000  
Fax: (202) 719-7049  
***Counsel for the National Religious  
Broadcasters Music License Committee,  
Salem Communications Corp., Clear Channel  
Communications Inc., and Sirius Satellite  
Radio Inc.***

Dusty Rhodes  
WAY-FM Media Group, Inc.  
PO Box 64500  
Colorado Springs, CO 80962  
Ph: (719) 533-0300  
Fax: (719) 278-4339

Alan D. Woodrum  
Family of Faith Radio – WFOF  
610 Third Street  
PO Box 227  
Covington, IN 47932  
Ph: (765) 793-4088  
Fax: (765) 793-4039

Kevin Shively  
Beethoven.com, LLC  
1039 Asylum Avenue  
Hartford, CT 06105  
Ph: (860) 525-1069  
Fax: (860) 246-9084

Joel R. Willer  
University of Louisiana at Monroe  
120 Stubbs Hall  
401 Bayou Drive  
Monroe, LA 71209  
Ph: (318) 342-5665  
Fax: (318) 342-1426

Dave Black  
602 State Street  
Madison, WI 53703  
Ph: (608) 262-1864  
Fax: (608) 265-3549

David E. Kennedy  
140 East Market Street  
York, PA 17401  
Ph: (717) 852-2132  
Fax: (717) 771-1436

Deborah S. Proctor  
WCPE  
PO Box 828  
Wake Forest, NC 27588-0828  
Ph: (919) 556-5178  
Fax: (919) 556-9273

Ann Robinson  
218 MU East  
Oregon State University  
Corvallis, OR 97331  
Ph: (541) 737-3374  
Fax: (541) 737-4999

Michael D. LeMay  
WORQ  
1075 Brookwood Drive  
Suite 2C  
Green Bay, WI 54304-4135  
Ph: (920) 494-9010  
Fax: (920) 494-7602

Bill Keith  
46181 Joy Road  
Canton, MI 48187  
Ph: (734) 416-7732  
Fax: (734) 416-7763

John Crigler  
McClodie A. Virtue  
Garvey Schubert Barer  
Fifth Floor, The Flour Mill Building  
1000 Potomac Street, N.W.  
Washington, D.C. 20007  
Ph: (202) 965-7880  
Fax: (202) 965-1729  
***Counsel for National Federation of  
Community Broadcasters***

Arthur Levine  
Finnegan, Henderson, Farabow, Garrett, &  
Dunner LLP  
1300 I Street, N.W.  
Washington, DC 20005-3315  
Ph: (202) 408-4000  
Fax: (202) 408-4400  
***Counsel for American Federation of  
Television and Radio Artists***

Ann E. Chaitovitz, Esq.  
American Federation of Television and  
Radio Artists  
1801 K Street, NW  
Washington, DC 20006  
Ph: (202) 223-1235  
Fax: (202) 223-1237

William Malone  
James R. Hobson  
Miller & Van Eaton PLLC  
1155 Connecticut Ave, 1000  
Washington, DC 20036-4320  
Ph: (202) 785-0600  
Fax: (202) 785-1234  
***Counsel for Intercollegiate Broadcasting  
System, Inc. and Harvard Radio  
Broadcasting Co.***

Jonathan Potter  
Digital Media Association  
1615 L Street, NW.  
Suite 1120  
Washington, D.C. 20036  
Ph: (202) 775-2660  
Fax: (202) 715-0591

Seth D. Greenstein  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005  
Ph: (202) 756-8088  
Fax: (202) 756-8855  
***Counsel for Digital Media Association***

Barry P. Miller  
Wilkinson Barker Knauer, LLP  
2300 N Street, N.W.  
Suite 700  
Washington, D.C. 20037  
Ph: (202) 383-3411  
Fax: (202) 783-5851  
***Counsel for Bonneville International  
Corporation***

Clifford M. Harrington  
Barry H. Gottfried  
Cynthia D. Greer  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20006  
Ph: (202) 663-8000  
Fax: (202) 663-8007  
***Counsel for XM Satellite Radio, Inc.***

Mildred Drake  
WDFB  
P.O. Box 106  
Danville, KY 40423-0106  
Ph: (859) 236-9333  
Fax: (859) 236-3348

John Meyer  
Meyer Multimedia Services  
Meyer Broadcasting Corporation  
10200 South Broadway  
Crown Point, IN 46307-8559  
Ph: (219) 661-9140  
Fax: (212) 661-9040

Shirley Garner  
KYCC  
9019 West Lane  
Stockton, CA 95210  
Ph: (209) 477-3690  
Fax: (209) 477-2762

Rob Bigalke  
KLSU  
39 Hodges Hall  
Baton Rouge, LA 70803-3906  
Ph: (225) 578-1697  
Fax: (225) 578-1698

Douglas Rowlett, Ph.D.  
iRadio  
10141 Cash Road  
Stafford, TX 77477  
Ph: (713) 718-6768  
Fax: (713) 718-7779

Jamie Hoover  
KUGS-FM  
Western Washington University  
Bellingham, WA 98225  
Ph: (360) 650-4771  
Fax: (360) 650-7736

Andrew P. Sutor IV  
Entercom Communications Corp.  
401 City Avenue, Suite 409  
Bala Cynwyd, PA 19004  
Ph: (610) 660-5655  
Fax: (610) 660-5662  
***Counsel for Entercom Communications Corp.***

Brian Hurley  
Detroit Industrial Underground  
1700 S. Walton  
Westland, MI 48186  
Email: brian@detroitindustrial.org

David G. LeGrand  
2300 West Sahara Avenue  
Suite 800  
Box 8  
Las Vegas, NV 89102  
Ph: (702) 222-2500  
Fax: (702) 365-6940  
***Counsel for Webcaster Alliance***

Thomas Mondell  
whereverRadio.com  
P.O. Box 6012  
Ellwood City, PA 16117  
Ph: (724) 758-2710  
Fax: (724) 758-7298

Robert Abbett  
Hot Spots Hawaii, Inc.  
333 Maluniu Avenue  
Kailua, HI 96734  
Ph: (808) 263-6420  
Fax: (808) 263-8289 \*10 pages or less

Kristen D. Northern  
Emmis Communications Corp.  
40 Monument Circle  
Suite 700  
Indianapolis, IN 46204  
Email: knorthern@emmis.com

Ken Van Prooyen  
RBC Ministries  
Box 2222  
Grand Rapids, MI 49555-0001  
Ph: (619) 942-6770  
Fax: (619) 974-2779

Tracy Barnes  
ASGAARD Interactive Multimedia, LLC  
Hardradio.com  
3504 Locust Street  
Rowlett, TX 75089  
Ph:  
Fax:

Elizabeth H. Rader  
Stanford Law School  
Center for Internet & Society  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Ph: (650) 724-0517  
Fax: (650) 723-4426  
***Counsel for Collegiate Broadcasters, Inc.***

Ronald H. Gertz, Esq.  
Les Watkins, Esq.  
Royalty Logic, Inc.  
405 Riverside Drive  
Burbank, CA 91506  
Ph: (818) 995-8900  
Fax: (818) 558-3484  
***Counsel for Royalty Logic, Inc.***

Cara Levi

By:

**LAWRENCE E. FELDMAN & ASSOC.**

**ATTORNEYS AT LAW**  
101 Greenwood Avenue  
Jenkintown Plaza, Suite 230, Jenkintown, PA 19046  
(215) 885-3302 • fax (215) 885-3303 • www.leflaw.net

Lawrence E. Feldman  
Roseann E. Weisblatt\*  
Steven G. Tyson\*

*\*Admitted to PA and NJ Bars*

June 11, 2003

David O. Carson, Esquire  
General Counsel  
US Copyright Office  
P.O. Box 70977  
SW Station  
Washington DC 20024

Re: Matter of Digital Performance Rights in Sound Recordings Rate Adjustment Docket No.  
2002-1 CARP DSTRA 3 and 2000-2 CARP DTNSRA

Dear Mr. Carson:

Enclosed for filing are an original and five (5) copies of the comments of Lester Chambers objecting to proposed terms in response to the Notice of Proposed Rulemaking published at 68 Fed. Reg. 27506 (May 20, 2003). Copies are also being served on the parties whose names appear on the service list for this matter.

Please feel free to contact me at (215) 885-3302 should you have any questions.

Sincerely,



Lawrence E. Feldman, Esq.  
Attorney for Lester Chambers

LEF/sgt

cc: Counsel on service list

enc.

ORIGINAL

RECEIVED

JUN 11 2003

GENERAL COUNSEL  
OF COPYRIGHT

RECEIVED

JUN 17 2003

GENERAL COUNSEL  
OF COPYRIGHT